



Appeal Decision

Site visit made on 17 February 2025

by **Andrew Smith BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/C1055/W/24/3347441

Land rear of Pear Tree Plaza, Pear Tree Road, Derby, Derbyshire DE23 8NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by 2i Investments Ltd against the decision of Derby City Council.
 - The application Ref is 23/01538/OUT.
 - The development proposed is outline planning application for the erection of 9 no flat units and removal of tree.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal proposal is for outline planning permission with all detailed matters reserved for future approval. Whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of access, appearance, landscaping, layout and scale as a guide to how the site might be developed.

Main Issues

3. The main issues are:
 - Whether or not the proposed development would preserve the locally listed building known as the former Carnegie Library (the building), including consideration of the effect of the proposed development upon the streetscene within Portland Street;
 - The effect upon protected trees, having particular regard to any implications for the character and appearance of the area and the setting of the building;
 - The effect upon the setting and thereby the significance of the locally listed building known as Pear Tree Road Baptist Church (the Baptist Church); and
 - Whether or not acceptable living conditions would prevail for future occupiers of the proposed development, having particular regard to access to light, outlook, privacy, and noise.

Reasons

Former Carnegie Library – locally listed building

4. The building dates to the early part of the 20th-century, is of red brick construction, of English baroque style, and occupies a site addressed by Pear Tree Road to the

north-east and Portland Street to the west. Its heritage significance as a non-designated heritage asset is drawn, in-part, from its origins as a high-status civic building, its range of traditional external-facing materials, and its array of surviving decorative features. Significance is further derived from the presence of various well-established and protected¹ trees to the perimeter of the building's grounds, which make an influential contribution to its setting.

5. The submitted proposed plans indicate the introduction of nine one-bedroomed flats across three storeys of accommodation to the south-western portion of the site. This block of new development, as illustrated upon the plans submitted, would address Portland Street and sit alongside the western wing of the building (the west wing) so as to attach to it. This featureful wing, which synergises with and takes architectural cues from other elements of the building, incorporates an open-pedimented gable with projecting roof, intricate eaves-level dentillations, brick quoining, and several multi-paned sliding sash timber windows.
6. It is problematic that the proposed development, as illustrated on the submitted plans, would directly overlap/obscure the southern elevation (including an original timber sash window) and eaves of the west wing. Moreover, a distinct loss of valuable historic fabric would be necessitated should new development be physically attached to the west wing in the manner indicated to be the intention. Thus, notwithstanding the adjacent presence of lower-value flat-roofed elements setback from Portland Road, I cannot accept any suggestion made that the scheme would maintain all aspects and characteristics that inform the qualities of the building.
7. In any event, owing to its size (including generous footprint coverage) and intended forward positioning towards Portland Street, it is fair to assert that the new block of development would not be experienced as a genuinely subordinate and respectful addition to either the west wing or wider building taken as a whole. This is even though the west wing's clock tower and associated roofscape would remain appreciable from various available vantagepoints.
8. It is also noteworthy that the proposal would considerably erode the spaciousness presently provided to the building by its grounds. It has been suggested that no viewpoint to the building provides for a visual demonstration of space around it. To the contrary, the building is clearly read and experienced as a prominent and high-status standalone building set within its own planned mature-landscaped grounds. Whilst the building's current uses do not actively interact with the southern portion of these grounds, significance is still derived from an absence of built development to this part of the site and the associated breathing space that is offered within a dense urban environment. I acknowledge here that there is no reference to external space in the local list entry. However, the purpose of said local list entry is not to comprehensively cover all aspects of the building's heritage significance – it instead provides a brief summary of some key aspects of historic interest.
9. In terms of the effect upon the wider Portland Street streetscene, I accept that the newly intended block of development would be anticipated to closely reflect the general form and appearance of the high-density rows of terraced dwellings that define the street and that the development would sit alongside. I also accept that the proposed fenestration, as depicted upon the submitted plans, seeks to take

¹ via Tree Preservation Order 2020 Number 594

reference from existing window designs/patterns in the immediate locality (including from the building itself). Even so, in view of the particular characteristics of the host site and high-status building in question, the proposed development as illustrated upon the submitted plans would – on a localised basis – appear as an incongruous, insensitive, and unduly cramped addition to the streetscene.

10. I acknowledge that the proposal before me is in outline form, such that the layout and scale of development (amongst other reserved matters) could evolve at detailed planning stage should permission be forthcoming. Even so, the quantum of development (in this case nine flats) is set at outline stage and the site's constraints dictate that development of this type would inevitably be focused to the southern side of the site in a comparable guise to that preliminarily proposed. Accordingly, it has not been satisfactorily demonstrated that it would be possible to construct nine flats without necessitating distinct losses of historic fabric and/or heritage significance associated to the building.
11. For the above reasons, even before coming on to specifically consider the effect upon protected trees, I find that the proposed development would fail to preserve the building and cause significant harm to its heritage significance. As a consequence, a localised adverse effect upon the Portland Street streetscene would also materialise. The proposal conflicts with saved Policies E19 and H13 of the City of Derby Local Plan Review (January 2006) (the LPR) and Policies CP3, CP4 and CP20 of the Derby City Local Plan Part 1 Core Strategy (January 2017) (the CS) in so far as these policies seek a satisfactory form of development, require proposals to respond positively to heritage assets, and set out that development proposals that would have a detrimental effect on locally listed buildings or structures shall not normally be approved. In accordance with the terms of the National Planning Policy Framework (December 2024) (the Framework), identified harm to a non-designated heritage asset should be taken into account in determination. I shall return to the harm identified in my Planning Balance below.

Protected trees

12. The proposal involves the removal of one of the site's protected trees, a Silver Birch (T1), to make way for the intended development. Further, the submitted plans indicate built development close to an additional protected Silver Birch (T2) also situated to the southern side of the site.
13. Both protected trees in question are well-established mature specimens. I observed both to have expansive crowns and neither to exhibit any obvious structural defects. Whilst the smaller of the two trees, T1 has a close relationship to Portland Street and is visible, at least in part, from a range of publicly accessible vantage points. Further, T2, although more discreetly sited in comparison, is of a size and height that promotes visibility between or above adjacent buildings from various locations. As such, both T1 and T2 make positive contributions to the verdant character and appearance of the local townscape and to the setting of the building as part of an assemblage of protected mature trees.
14. Even though it is not the intention to remove T2, it is fair to assert that new-build development and associated groundworks close to the tree could hold the potential to negatively impact upon its long-term health and amenity value. It has been recommended via a Tree Survey and Arboricultural Impact Assessment (6 December 2023) that a protective fence and ground protection matting be

installed during the construction process, and that 'pile and beam' foundations be utilised and ultimately be accompanied by a detailed method statement and suitable foundation designs.

15. However, the aforementioned recommendations do not alter the fact that built development has been illustrated to incur across a not inconsequential portion of T2's calculated root protection area. Moreover, the intended built block, as depicted upon the submitted drawings, would be close enough to the tree so as to encroach beneath a meaningful portion of its canopy. This was verifiable upon inspection. In this context, insufficient evidence is before me to demonstrate that the proposal would not have adverse implications for T2. Whilst the scheme is in outline form and could evolve at detailed planning stage, on the basis of the evidence before me and the site constraints that are at play, it has not been clearly demonstrated that nine flatted units could be suitably accommodated upon the site without negative effects upon the long-term health and amenity value of T2.
16. For the above reasons, the proposal, through the loss of a high-value protected tree and the likely adverse impact upon the long-term health and amenity value of a further high-value protected tree, would give rise to significant harm being caused to the character and appearance of the area. Further, adverse implications for established trees that comprise an integral part of the building's setting would exacerbate the harm to heritage significance that I have already identified under the first Main Issue to this appeal. The proposal conflicts with saved Policy E19 of the LPR and Policies CP3, CP4, and CP20 of the CS in so far as these policies require proposals for development to make a positive contribution towards the character, distinctiveness and identity of neighbourhoods, and guard against a detrimental effect on locally important buildings or structures as a result of impact on setting or context.
17. For the avoidance of doubt, I find Policies CP2 (Responding to Climate Change), CP16 (Green Infrastructure), and CP19 (Biodiversity) of the CS to be of little relevance to this Main Issue of the appeal. In any event, in view of the somewhat limited natural features impacted and the circumstances that avail whereby landscaping is a reserved matter, there is no clear reason for me to identify the scheme to materially conflict with any of the various requirements of these policies.

Setting of the Baptist Church – locally listed building

18. The Baptist Church dates to the early 20th-century. Its heritage significance as a non-designated heritage asset is drawn, in-part, from its relevance to the historic evolution of the city and its role and function as a visual and social landmark. Significance is further derived from its red-brick-led palette of traditional external facing materials and its array of surviving decorative architectural features.
19. The building is situated proximate to the Baptist Church and therefore within its setting. Even so, as the proposed development would inevitably be focussed to the southern side of the site, a discernible degree of separation would avail between said development and the asset in question. Thus, whilst flatted development anticipated to be of three storey height would be fairly expected to influence some available long-range views of the Baptist Church, most particularly along Portland Street, the Church would continue to be experienceable as a building of high local status within a diverse urban context.

20. For the above reasons, without prejudice to my findings on the first and second Main Issues of this appeal, the proposal would not cause harm to the heritage significance of the Baptist Church by virtue of development within its setting. In the context of this specific Main Issue, the proposal accords with saved Policy E19 of the LPR and Policy CP20 of the CS in so far as these policies seek to ensure the conservation of locally important buildings and structures.

Living conditions for future occupiers

21. As set out above, the proposed flats are intended to the southern portion of the site. Owing to the quantum of development under consideration and the space constraints that prevail, a close physical relationship between the new flatted block and the facing blank gable end of the neighbouring residential property to the south would appear unavoidable. This is reflected in the suite of submitted plans that are before me.
22. The submitted floorplans indicate that each of the bedrooms proposed for Flats 2, 5, and 8 would be served by a single south-facing window opening that would inevitably offer limited outlook and, most particularly at ground floor level, restricted access to natural light. However, each of the aforementioned flats would, on the basis of the plans submitted, be served by a west-facing opening to its main living space (where the greatest amount of time would be most likely spent by future occupiers when at home and awake) offering good outlook and unhampered access to light.
23. Optimal arrangements for the future occupiers of all nine proposed flats in terms of either available outlook or access to light would be highly unlikely to be achievable at this site. However, it must be borne in mind that in high-density urban areas such as this there are invariably constraints at play that challenge the realistic achievement of ideal outcomes such that compromises have to be considered. Thus, taking the proposal as a whole, I am content that satisfactory standards of outlook and access to light for future occupiers would be achievable. This is even when noting the position of T2 to the immediate rear of the intended built works.
24. Turning to privacy considerations, it appears that the Council's main concern is related to the potential for the overlooking of main habitable room windows from the shared amenity space that is shown on the proposed site plan. However, it must be noted that the scheme is at outline stage. Accordingly, the shared amenity space could be reconfigured at reserved matters stage by, for example, the provision of boundary treatments and/or the establishment of private defensible areas. I am therefore content that any concerns in a privacy sense could be successfully combatted at detailed planning stage in the event outline permission be granted.
25. As regards noise, it is noteworthy that an officer of the Council's Environmental Protection Team has raised serious concerns that detriment would be caused to future occupiers by virtue of exposure to street noise and high levels of traffic noise. It was apparent upon inspection that Pear Tree Road is a busy thoroughfare that accommodates both a high volume of traffic and a range of commercial uses. However, Portland Street, to which the intended development would more readily relate, offers a somewhat quieter environment dominated by residential uses. On balance, even though it is my understanding that the building itself presently accommodates commercial/community uses, I am satisfied that a comprehensive

noise assessment could be suitably secured via condition to inform detailed residential development proposals at this site in the event outline permission be forthcoming.

26. For the above reasons, I am suitably content that – having particular regard to access to light, outlook, privacy, and noise – acceptable living conditions would prevail for future occupiers of the proposed development. In the context of this specific Main Issue, the proposal accords with saved Policies GD5 and H13 of the LPR in so far as these policies promote a high-quality living environment and set out that planning permission will only be granted for development where it provides a satisfactory level of amenity within the site or building itself.

Other Matter

27. The Grade II listed Church of St Thomas the Apostle (the Church) is situated to the north of the site. Its significance and special interest as a designated heritage asset is drawn, in-part, from its age, its highly decorated facades, and its role and function as a visual and social landmark. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires that special regard be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Whilst I adjudge the site to fall within the Church's setting, the physical and visual separation that would avail between the asset and the part of the appeal site earmarked for development, leads me to identify that no harm would be caused to the Church's significance or special interest as a result of development within its setting.

Planning Balance

28. As it is common ground that the Council cannot currently demonstrate a five-year supply of deliverable housing sites, and the policies of the Framework that protect areas or assets of particular importance do not provide a strong reason for refusing planning permission, the presumption in favour of sustainable development is engaged. For decision making, the engagement of the presumption in favour of sustainable development means that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework's policies taken as a whole having particular regard to specified key policies.
29. In terms of the scheme's benefits, it would deliver nine additional housing units in the context of a significant housing supply shortfall. Indeed, it is my understanding that the latest published position (January 2025) of the Council is a 3.85-year supply. Further, an efficient use would be made of sustainably located urban land that meets the Framework's definition of previously developed land, and economic benefits would be brought about by job creation, investment in the local economy during the construction phase, and increased household spending once occupied. Therefore, in cumulative terms, I attach very significant weight to the benefits that would be associated with the delivery of nine additional housing units at this site. This is even though this level of delivery would not make a noticeable difference to the extent of the identified housing supply shortfall.
30. Nevertheless, I have identified highly consequential significant harms associated to a clear failure to demonstrate that the building – a prominent non-designated heritage asset of obvious value – and its setting would be preserved in a heritage

significance sense, and due to identifiable adverse effects upon the streetscene/character and appearance of the area including by virtue of the scheme's implications for protected trees. These identified harms conflict with specific requirements of the Framework, which include the aims of establishing or maintaining a strong sense of place and ensuring that developments are sympathetic to local character and history.

31. To my mind, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the Framework's policies taken as a whole. Thus, the presumption in favour of sustainable development does not apply in this case. Moreover, the proposal conflicts with the development plan when read as a whole and material considerations, including the Framework, do not lead me to a decision otherwise.

Conclusion

32. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR